



ENVIRONMENTAL PROTECTION AGENCY

FRL-9918-91-OGC

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), notice is hereby given of a proposed consent decree to address a lawsuit filed by Sierra Club in the United States District Court for the District of Columbia: Sierra Club v. McCarthy, Case No. 1:14-cv-00833-ESH (D.D.C.). On May 20, 2014, Plaintiff filed a complaint which alleged that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), failed to perform her nondiscretionary duty to take action on a number of Texas state implementation plan (“SIP”) submissions for the Dallas/Ft. Worth nonattainment area to address the 1997 8-hour ozone NAAQS within one year of the date the submissions were deemed complete by operation of law. These SIP submissions include a demonstration of attainment, reasonably available control technology (“RACT”) requirements for volatile organic compounds (“VOCs”) and nitrogen oxides (“NOx”), and provisions for reasonable further progress (“RFP”) toward attainment. Plaintiff’s complaint also alleged that the Administrator failed to perform a nondiscretionary duty to determine whether the Dallas/Ft. Worth area attained the 1997 8-hour ozone NAAQS by the June 15, 2013 attainment date and to reclassify the area accordingly. The proposed consent decree would establish deadlines for EPA to take these actions.

DATES: Written comments on the proposed consent decree must be received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2014-0815, online at www.regulations.gov (EPA's preferred method); by e-mail to oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Kaytrue Ting, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-6380; fax number: (202) 564-5603; email address: ting.kaytrue@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed consent decree.

The proposed consent decree would resolve a lawsuit filed by Sierra Club seeking to compel the Administrator to take action under CAA sections 110(k), 179(c)(1)-(2) and 181(b)(2)(A)-(B). Under the terms of the proposed consent decree, EPA would agree to sign one or more notices of final rulemaking to approve or disapprove, in whole or in part, the Texas SIP submissions for the Dallas/Ft. Worth 1997 8-hour ozone nonattainment area identified in Attachment A of the consent decree, including: NO_x and VOC RACT provisions by July 31, 2015; an ozone attainment demonstration by August 31, 2015; and the remaining SIP submissions identified by Plaintiff, including RFP provisions, by December 15, 2014. The

proposed consent decree also provides that not later than fifteen days after the entry of the consent decree, EPA would agree to sign a notice containing the Administrator's proposed determination of whether Dallas/Ft. Worth attained the 1997 8-hour ozone NAAQS by the applicable attainment date. The proposed consent decree further provides that not later than 180 days after publication of the proposed determination of whether Dallas/Ft. Worth attained the 1997 ozone NAAQS by the applicable attainment date, EPA would agree to sign a notice containing the Administrator's final determination of whether Dallas/Ft. Worth attained by the applicable attainment date. EPA would not be obligated to make a final determination of whether Dallas/Ft. Worth attained the 1997 8-hour ozone NAAQS if the area is redesignated to attainment or if a final rulemaking revoking the 1997 ozone NAAQS becomes effective. Under the terms of the proposed consent decree, EPA will deliver notice of the above actions to the Office of the Federal Register for review and publication within 3 business days of issuance or signature. In addition, the proposed consent decree indicates that EPA agrees that Sierra Club is entitled to recover its costs of litigation pursuant to 42 U.S.C. § 7604(d) for work incurred prior to the lodging of the consent decree.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed consent decree from persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the

consent decree will be affirmed.

II. Additional information about commenting on the proposed consent decree.

A. How Can I Get A Copy Of the Consent Decree?

The official public docket for this action (identified by EPA-HQ-OGC-2014-0815) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA’s policy is that copyrighted material, including copyrighted material contained in a public

comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to

EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: October 29, 2014.

Lorie J. Schmidt,
Associate General Counsel.

[FR Doc. 2014-26449 Filed 11/06/2014 at 8:45 am; Publication Date: 11/07/2014]